

**CITY FIBER OPTIC SYSTEM
LEASE AGREEMENT**

THIS AGREEMENT (hereinafter "Agreement") is made by and between the City of Columbia, Missouri, a municipal corporation located at 701 E. Broadway, Columbia Missouri 65201 (hereinafter "CITY"), and Stephens College, a benevolent corporation located at 1200 E. Broadway, Columbia, Missouri 65215 (hereinafter "LESSEE"). LESSEE and CITY are each individually referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, CITY has constructed a single mode fiber optic cable system (hereinafter "Fiber Optic System") linking various CITY facilities and forming a geographically complete fiber optic loop; and

WHEREAS, LESSEE has need for a fiber optic link between various LESSEE facilities for networking purposes; and

WHEREAS, CITY and LESSEE wish to enter into an agreement for LESSEE to use two (2) unused (dark) strands on CITY's Fiber Optic System.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the Parties agree as follows:

1. USE OF CITY'S FIBER OPTIC SYSTEM

CITY shall maintain a single mode fiber optic cable system forming a complete loop. LESSEE shall have the right to use two (2) dark strands on CITY's fiber optic loop and four (4) dark strands on the connecting radial fiber-optic lines to enable them to communicate in both directions on the loop. LESSEE may request additional point-to-point services. Such requests may be granted or denied solely at the discretion of CITY. LESSEE agrees that it will use the dark strands only for Internet-type services and for other purposes allowed by law.

2. RADIAL LINES

CITY shall install, at LESSEE's cost, and maintain at CITY's cost, the radial fiber optic lines connecting CITY's Fiber Optic System to LESSEE's facilities. Both CITY and LESSEE agree that CITY will own any such radial fiber optic lines that CITY installs or maintains.

3. ADDITIONS, MOVES AND NEW INSTALLATIONS

LESSEE may, from time to time, request non-recurring adds, moves or changes. CITY will provide LESSEE with a written estimate of the labor and materials to do such work as required. LESSEE will issue a written authorization and, upon completion of work, pay CITY the costs associated with the addition, move or

change requested by LESSEE. LESSEE shall reimburse all expenses (including labor and materials) incurred by CITY related to the additions, moves or new installations. Non-recurring services include, but are not limited to:

- a. Installation of a new fiber-optic radial to a facility.
- b. Moving existing fiber-optic radials.
- c. Physical reconfiguration of existing fiber-optic radial pairs.

4. MAINTENANCE OF FIBER OPTIC CABLE

All maintenance and emergency repair functions on the Fiber Optic System shall be provided by CITY. CITY shall make reasonable efforts to repair any damage to its Fiber Optic System that disrupts LESSEE leased fiber within twenty-four (24) hours after receiving a report from LESSEE that service has been disrupted. CITY shall provide fiber optic system repair service twenty-four (24) hours per day, seven (7) days per week.

CITY and LESSEE agree that LESSEE's use of the Fiber Optic System is an accommodation to LESSEE. Under no circumstance shall LESSEE's use of the Fiber Optic System take priority over CITY's use of CITY's Fiber Optic System. In the event of an emergency which disrupts service on the fiber optic cable for both LESSEE and CITY, CITY shall repair any damage to its Fiber Optic System that disrupts CITY's use of the fiber optic before repairing LESSEE's service.

5. PAYMENTS

For the use of the ring leased fiber and radial leased fiber facilities, LESSEE shall pay to CITY on the first business day of each month the following amounts: (1) for each full calendar month that a ring is in place, a recurring fee of three thousand eight hundred forty-seven dollars (\$3,847.00) per month for each ring; and (2) for each calendar month that a point-to-point connection is in place, an additional two hundred fifty dollars (\$250.00) per month per point-to-point connection.

The above price shall remain in effect during the initial term of this lease. Thereafter, CITY may adjust the price of the payments at lease renewal. If LESSEE objects to the amount of any price increase, it may negotiate the amount of the payments with CITY. If an agreement is not reached on the amount of the payments, LESSEE may terminate this Agreement by rejecting contract renewal.

6. TERM

This Agreement shall become effective on the date it is executed by CITY and shall remain in effect until December 31, 2016. Thereafter, the Agreement shall

automatically be renewed for successive terms of one (1) year unless the Agreement is terminated pursuant to the provisions of this Agreement.

7. TERMINATION

After the initial term, except as may be provided elsewhere in this Agreement, either party may terminate this Agreement by giving the other party at least six (6) months notice prior to the date of termination. In addition, if LESSEE wishes to remove one or more specific sites from the Agreement, it may do so by giving CITY at least one (1) month written notice. Any termination of the Agreement or removal of a site shall become effective on the last day of the month.

CITY may terminate for breach of this agreement by LESSEE upon thirty (30) days written notice.

In the event it is determined by CITY that a Missouri municipality may not legally offer the services contemplated herein, this Agreement shall immediately terminate and neither party shall have any claim upon the other as a result of such termination. Any termination of the Agreement or removal of a site shall become effective on the last day of the month.

8. SOLE BENEFIT OF PARTIES

This agreement is for the sole benefit of CITY and LESSEE. Nothing in this Agreement is intended to confer any rights or remedies on any third party.

9. LIABILITY

In no event, whether as a result of breach of contract, tort liability or otherwise, shall either party or its agents or employees be liable to the other party for indirect, economic or consequential damages of any nature.

10. NOTICES

Notice under this Agreement shall be given in writing and may be hand delivered, sent by U.S. Mail or faxed as follows:

If delivered to City:

City of Columbia, Missouri
ATTN: Director of Water & Light
P.O. Box 6015
Columbia, MO 65205-6015
Fax: (573) 443-6875

If delivered to Stephens College:

Stephens College
ATTN: IRTS Box 2064
1200 East Broadway
Columbia, MO 65215

A party may change the address to which, fax number to which or official to whom notice is to be given by giving written notice of such change to the other party. Upon any change of address or assignment or transfer of this Agreement, LESSEE and the assignee or transferee shall notify CITY of the address change, assignment or transfer and shall provide CITY with the names and addresses of all parties and individuals who shall receive notice from CITY as may be required by this Agreement. Failure to provide CITY with such information shall be a breach of this Agreement.

11. ACCOMMODATION

LESSEE understands and agrees that CITY owns, uses and maintains the Fiber Optic System for CITY purposes. LESSEE agrees that this Agreement to allow LESSEE to use two dark strands on CITY's Fiber Optic System is done as an accommodation to LESSEE and is not an agreement by CITY to create a transferable business interest in CITY property for the benefit of LESSEE or to subordinate CITY's use of the Fiber Optic System to LESSEE.

12. CITY'S USE OF FIBER OPTIC SYSTEM

LESSEE's use of the two (2) dark strands of CITY's Fiber Optic System shall not interfere with CITY's use of the Fiber Optic System. In the event LESSEE's use does interfere with CITY's use of the Fiber Optic System, CITY shall give LESSEE written notice of the interference. LESSEE shall have thirty (30) days from the date of such notice to end such interference. CITY's obligation to give LESSEE notice of such interference and an opportunity to end the interference shall not preclude CITY from taking those steps it deems necessary to protect its operations from such interference. Failure of LESSEE to end the interference within thirty (30) days may be considered by CITY as breach of this Agreement by LESSEE.

13. ASSIGNMENT

LESSEE shall not assign or transfer this Agreement without prior written consent of CITY. In considering whether to give its permission to an assignment, CITY may consider the assets and reputation of the potential assignee and whether the assignee can fulfill the conditions of this Agreement and whether such an assignment would be in the best interest of CITY. No consent shall be required for an assignment or transfer to a parent, subsidiary of or an entity controlled by LESSEE, under common control with LESSEE, controlling LESSEE or merged or consolidated with LESSEE.

14. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties. No modification, amendment or waiver of any provision of this

Agreement or any of the rights or obligations arising hereunder shall be valid unless in writing and executed by both parties.

15. GOVERNING LAW/JURISDICTION

This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of or relating to this Agreement shall be Boone County, Missouri, or the United States Western District of Missouri. The parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri and waive any defense of forum non conveniens.

16. NO WAIVER OF IMMUNITIES

In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives as of the date of the last signatory to this Agreement.

CITY
CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

LESSEE
STEPHENS COLLEGE

By: Linda L. Deventer

Title: VP, Fin & Admin

Date: 03-02-16

ATTEST:

By: Mark R. Brun

Date: 3/2/2016